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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 690

BALTIMORE BUILDING AND CONSTRUCTION TRADES COUNCIL,

Petitioner,

v.

SELBY-BATTERSBY AND COMPANY AND ASSOCIATED BUILDERS AND CONTRACTORS OF MARYLAND, INCORPORATED,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION TO ISSUANCE OF THE WRIT

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, (Pet. pp. 27-38) is reported at 259 F. 2d 151. The decision of the National Labor Relations Board (herein called the Labor Board) is reported at 117 N.L.R.B. 366 (P.A. pp. 1-44).[1]

[1] "P.A." refers to the appendix filed by petitioners below, the Respondents herein, with the U. S. Court of Appeals for the Fourth Circuit in this matter. "Pet." refers to the petition for writ of certiorari in this matter.

JURISDICTION

The judgment of the Court of Appeals was entered on September 12, 1958. The petition for a writ of certiorari was filed on February 9, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Petitioner herein was legally responsible for activities directed at building contractors in and about Baltimore, Maryland, beginning in December, 1954.

STATUTE INVOLVED

The statute involved is the National Labor Relations Act, as amended (61 Stat 136, 29 U.S.C. 151, *et seq.*), (hereinafter called the Act) sections 160(b) and (c) of which are set forth at pp. 25-26 of the petition.

STATEMENT

The Petitioner, Baltimore Building and Construction Trades Council, is an integral part of a labor organization complex devoted to causing building contracting employers to sign labor union contracts and engaged in administering labor union problems in the building industry. Petitioner is chartered by the Building and Construction Trades Department, AFL-CIO (hereinafter called the "Building Trades Department"), which is itself composed of so-called International Unions in the building trades industry. Petitioner is composed of local unions affiliated with such International Unions. The Petitioner has primary responsibility from the Building Trades Department to "organize" building trades contractors in the Baltimore area and to cause them to sign labor contracts (P.A. 50-51, 175-176). The traditional "organizing" means in the construction in-

dustry has been the concerted withdrawal — i.e. strike[1] — of union employees to compel employers to operate on a completely union basis and only to contract or subcontract to other employers who subscribe to that principle of the construction unions. The Petitioner subscribed and continues to subscribe to that principle and has engaged in or attempted to induce or encourage strikes in the Baltimore area in furtherance of that principle (P.A. 203, 212-214, 215-217).

In December 1954, two months after Petitioner, as a result of charges filed with the Labor Board, had been enjoined from strike activity engaged in as part of an attempt to "organize" a Baltimore building contractor, the Petitioner sought the assistance of the Building Trades Department in carrying out the Petitioner's function and purpose of causing open shop, non-union contractors in Baltimore to accede to the union demands. The Department enlisted the aid of its affiliated International Unions (which are the parent organizations of the local unions affiliated with the Petitioner) in this common project (P.A. 209, 6-7). Arrangements for a meeting in Baltimore, Maryland of all concerned, in December, 1954, were handled on the local level by the president of Petitioner. At this meeting it was mutually agreed that primary responsibility for carrying forth the common project should be placed in the hands of certain representatives of the International Unions present, with the understanding that the direction of the project would eventually be turned back to the local Baltimore unionists, as did occur (P.A. 183, 185, 9-10). The program that was instituted, known as the "Standard Agreement"

[1] In Title V, Section 501(2) of the Labor Management Relations Act, 1957, "strike" is defined as follows: "The term 'strike' includes any strike or concerted stoppage of work by employees . . . and any concerted slow-down or other concerted interruption of operations by employees"

program, was for the benefit primarily of the Baltimore construction unionists and was aided and abetted at meetings of Petitioner and by officers and representatives of Petitioner during this period (P.A. 186, 26, 155-156).

The "Standard Agreement" program which was instituted and carried forward as a result of the Petitioner's request for aid in carrying out its functions in the Baltimore area followed the traditional "organizing" principle of the construction trades unions and resulted in a strike against a union subcontractor, to compel the subcontractor to sign the "Standard Agreement", which would commit it not to do business with any other contractor who was not a union contractor. Charges against the Petitioner and other unions involved were filed on May 3, 1955.

ARGUMENT

The question presented is extremely narrow and involves solely the question of legal responsibility for certain activities, and arises from a decision of the Court of Appeals which remanded the matter to the National Labor Relations Board for a decision on the merits of the case. We are advised by the Solicitor General of the United States that he has received a letter from the General Counsel of the Labor Board with reference to the instant petition stating in part as follows:

> "The case turned principally upon the question whether on the particular facts of this case the Council was legally responsible for activity otherwise unlawful under the National Labor Relations Act. The Fourth Circuit concluded that it was and remanded the case to the Board . . ."
>
> "The Board concluded that further judicial review . . . was not warranted and, accordingly, has decided to accept the remand. . . . the Board does not contemplate filing a response to the petition."

Notwithstanding the petitioner's somewhat strained contention that the Court of Appeals differed from the National Labor Relations Board with respect to some of the facts involved, there is not a substantial question before the Court on the facts of the case. It is to be noted that there is a complete unanimity among the Trial Examiner of the Labor Board, the Labor Board itself and the Court of Appeals on the fact that there is no substantial dispute with respect to the facts of this matter (P.A. 4, 39; Pet. 35).

Petitioner also complains that the Court of Appeals considered evidence of events occurring more than six months prior to May 3, 1955, the date upon which charges were filed, in determining the purpose of the acts of the Petitioner which occurred within the six months period, and the reasonable consequences to be anticipated from those acts. Petitioner contends that Section 10(b) [29 U.S.C. Sec. 160(b)] of the Act prevents such consideration. In this the Petitioner is clearly in error as the prior decisions of the Courts and the National Labor Relations Board demonstrate.

The Board has consistently held, with the approval of the Courts, that "Section 10(b) enacts a statute of limitations and not a rule of evidence." The rule was well stated in *Axelson Mfg. Co.*, 88 N.L.R.B. 761, 766:

> "... Section 10(b) enacts a statute of limitations and not a rule of evidence. It forbids the issuance of complaints and, consequently, findings of violation of the statute in conduct not within the 6 months period. But it does not ... forbid the introduction of relevant evidence bearing on the issue as to whether a violation has occurred during the 6 months' period. Events obscure, ambiguous or even meaningless when viewed in isolation may, like the component parts of an equation, become clear, definitive, and informative when considered in relation to other action. Conduct, like lan-

guage, takes its meaning from the circumstances in which it occurs. Congress can scarcely have intended that the Board, in the performance of its duty to decide the validity of conduct within the 6 months' period, should ignore reliable, probative, and substantial evidence as to the meaning and nature of the conduct."[3]

The *Axelson* case was cited with approval by the U. S. Court of Appeals for the Third Circuit in *N. L. R. B. v. Luzerne Hide and Tallow Co.*, 188 F. 2d 439, 443. To the same effect see *N. L. R. B. v. General Shoe Corp.*, 192 F. 2d 504, 507; *N. L. R. B. v. National Shoes, Inc.*, 208 F. 2d 688, 691-2; *N. L. R. B. v. Sharples Chemicals, Inc.*, 209 F. 2d 645, 653.

The decision of the Court of Appeals in *Superior Engraving Company, v. N. L. R. B.*, 183 F. 2d 783, cited by Petitioner, which was concerned with the application of Section 10(b) to unfair labor practices occurring prior to the effective date of the Act, itself clearly indicates that evidence antedating the filing of charges by more than six months can be used to prove a violation of the Act which occurred within the six months period. See 183 F. 2d 783 at 790-791.

It is clear, we submit, that the activities complained of in this matter were instigated, sponsored, aided and abetted by the Petitioner, its officers and agents, for the manifest benefit of Petitioner and its allies, all within the six months period preceding the filing of the charges. The course of action which occurred followed exactly the traditions of the Petitioner and the unions with which it is allied, conformed to the past practices and customs of the Petitioner

[3] In the *Axelson* case, the Labor Board considered evidence of a course of conduct going back for more than 15 years in order to assess an employer's responsibility for acts occurring within the 6 month period before the filing of charges.

and carried out the mandates of Petitioner's own Constitution and By-laws. It is, we submit, startling to suggest that Petitioner did not contemplate the course of action which ensued, from the very outset of its activities involved here, or, in particular, that Petitioner did not contemplate resort to strike action — the traditional union weapon — if persuasion and threats did not achieve its purposes.

As stated by the Court of Appeals below, ". . . it is enough that the Council instigated the course of events which proceeded, for the benefit of the Council, to the climax which was contemplated from the beginning, and that it took no action to disavow itself from the actions of a man who held the office of its president." See *I. B. E. W., Local 501 v. N. L. R. B.*, 181 F. 2d 34, 38-39; *Longshoremen's Union v. Juneau Spruce Corp.*, 189 F. 2d 177, 190; *Tompkins v. Sullivan*, 309 Mass. 496, 34 N.E. 2d 607, *cf. Local 562 United Association of Journeymen, etc.*, 107 N.L.R.B. 542.

The Court of Appeals was clearly correct in its determination of the legal consequences of the undisputed facts and its decision is neither in conflict with any decision of another U. S. Court of Appeals; nor presents a substantial issue for decision by the Court.

CONCLUSION

As stated by the General Counsel of the Labor Board the issue presented is whether on the particular facts of this case the Petitioner was responsible for the activities involved. The decision of the United States Court of Appeals for the Fourth Circuit holding the Petitioner responsible is correct. The Labor Board upon consideration has concluded that further judicial review of the matter is not warranted, and has decided to accept the remand. For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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